

United States District Court
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

UNITED STATES OF AMERICA

vs.

BARNEY LEE WEIMER, JR.

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Case No. 4:92cr4
(Judge Schell)

REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Pending before the Court is the request for revocation of Defendant's supervised release. After the District Judge referred the matter to this Court for a report and recommendation, the Court conducted a hearing on July 12, 2010, to determine whether Defendant violated his supervised release. Defendant was represented by Robert Arrambide. The Government was represented by Jay Johnson.

On August 6, 1992, Defendant was sentenced by the Honorable Paul Brown to two hundred and thirty-five months (235) months' custody followed by five (5) years of supervised release for the offense of Felon in Possession of a Firearm. On March 6, 2009, Defendant completed his period of imprisonment and began service of his supervised term.

On June 22, 2010, the U.S. Pretrial Services Officer executed a Petition for Warrant for Offender Under Supervision. The petition asserted that Defendant violated the following standard condition: the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance or paraphernalia related to such substances, except as prescribed by a physician. The petition alleges violation of the following special condition: the defendant shall participate in a program approved by the U.S. Probation Office for substance abuse, which may include testing to determine whether the defendant has reverted to the use of illegal drugs and/or alcohol.

The petition alleges that Defendant committed the following acts: (1) On May 5, 2009, and March 30, 2010, Defendant submitted a urine specimen that tested positive for marijuana. Defendant admitted to said use; (2) On March 25 and April 13, 2010, Defendant submitted a urine specimen that tested positive for methamphetamine and marijuana. Kroll Laboratories confirmed said use; (3) On April 19 and June 8, 2010, Defendant submitted a urine specimen that tested positive for methamphetamine. Defendant admitted to said use for April 19, 2010, and Alere Toxicology Services confirmed the June 8, 2010 result; and (4) On May 5 and June 7, 2010, Defendant failed to submit a urine specimen for testing at Wilson N. Jones Workmed as instructed and as part of the U.S. Probation Office's random drug testing program.

Prior to the Government putting on its case, Defendant entered a plea of true to all of the violations. The Court recommends that Defendant's supervised release be revoked.

RECOMMENDATION

The Court recommends that the District Judge revoke Defendant's supervised release. The Court recommends that Defendant be committed to the custody of the Bureau of Prisons to be imprisoned for a term of twenty-one (21) months with no supervised release to follow. It is also recommended that Defendant be housed in the Bureau of Prisons, Texarkana Unit.

After the Court announced the recommended sentence, Defendant executed the consent to revocation of supervised release and waiver of right to be present and speak at sentencing. Defendant and the Government also waived their right to file objections.

SIGNED this 12th day of July, 2010.


AMOS L. MAZZANT
UNITED STATES MAGISTRATE JUDGE